



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case Reference** : **CHI/45UD/MNR/2019/0012**

**Property** : **7 Wyatt House  
Wyatt Close  
Wisborough Green  
West Sussex RH14 0BP**

**Tenant** : **Mr Graham Wright**

**Landlord** : **Home Group Ltd**

**Type of Application** : **Determination of market rent:  
Housing Act 1988**

**Date of Decision** : **25 June 2019**

**Tribunal Members** : **Mr B H R Simms FRICS (chairman)  
Mr K Ridgeway MRICS (Valuer Member)**

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**REASONS FOR THE DECISION**

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## **Background**

1. On 20 February 2019 the Landlord served a notice under Section 13(2) of the Housing Act 1988 ('the Act') which proposed a new rent of £536.01 per calendar month in place of the existing rent of £522.40 per calendar month to take effect from 01 April 2019.
2. On 04 March 2019 the Tribunal received an application from the Tenant under Section 13(4) (a) of the Act referring the notice to a Tribunal.
3. The Tribunal issued Directions dated 01 May 2019 and informed the parties that the Tribunal intended to determine the rent on the basis of an inspection of the property and written representations subject to either party requesting an oral hearing. The Tenant made a request for an oral hearing. The Statements and documents that were delivered were circulated.

## **Inspection**

4. On 25 June 2019 the Tribunal members inspected the property accompanied by Mr Wright, the Tenant. The Landlord had been informed of the inspection but did not attend or send a representative.
5. The property is a modern ground floor retirement flat, approached by a common hall and passageway serving a laundry, kitchen and residents' lounge, in a purpose-built block in a residential area. Accommodation comprises: Hall, Living Room, Kitchen, Bedroom, Wet Room with shower, washbasin and W.C. Outside: Shared gardens, parking space.
6. The property has modern double glazed windows, electric storage and convector heating and is in satisfactory order for its age. The Tenant has supplied white goods, some floor coverings and curtains. The kitchen and bathroom fittings are satisfactory but there is limited ventilation particularly where there is no cooking extractor fan.

## **The Tenancy**

7. The Tribunal was provided with a photocopy of a Tenancy Agreement signed and dated by the parties 19 December 2017 for a monthly term from 25 December 2017 at a rent of £518.06 per calendar month including fixed services of £116.43.
8. The Agreement contains the usual Tenant obligations to occupy the property in a tenant-like manner and to pay the rent. Of particular relevance to the level of rent payable the Tenant also covenants to be responsible for interior re-decoration and small repairs in the property including, amongst other things, fuses, plugs & light bulbs, window glass, unblocking sinks and locks in certain circumstances.
9. The Landlord has to keep the structure and exterior in repair, to maintain, the common areas and to keep the services installations in repair and working order. This obligation is also set out in S.11 Landlord & Tenant Act 1985 ('the '85 Act').

## **The Parties' Representations**

10. The Tenant made representations both with his application and in response to Directions and these are briefly summarised here. The Landlord included an explanation with the original notice to the Tenant and this was in the bundle however the Landlord did not make any representations in response to Directions. The Tribunal has taken account of all the representations submitted together with matters raised at the hearing in making its determination.
11. Mr Wright included a statement with his application form and explained that the core rents had decreased over the years but the charges for services have increased. He believes that the costs could be substantially reduced if some of the old service contracts were renegotiated or cancelled and some of the residents could do some of the work to keep costs low.
12. He thinks that the Landlord is running its sheltered homes for its own benefit rather than the interests of its residents on a limited income.
13. He points out that there is no internet, which he pays for, no door bells and no intercom system.
14. The Landlord made no written statement in response to Directions.

## **Hearing**

15. A hearing had been arranged to be held at Crawley Magistrates Court following the inspection. When the Tribunal members attended the property there were two representatives of the Landlord Company at the administrative office. The Tribunal was informed that the Landlord did not wish to be represented either at the inspection or the hearing. The Chairman confirmed this on the telephone with a representative of the Landlord at its Newcastle office. Accordingly, and with the agreement of the parties, a hearing took place at the subject premises but only Mr Wright attended.
16. He referred to, and expanded upon, the issues he had raised in his written statements including the lack of mobile telephone signal, the non-availability of a wireless internet connection and the excessive service charges. We did note however that contrary to Mr Wright's representations there would appear to be a working door entry intercom and call system.
17. He also raised an issue regarding chlorine and other additives made, by Southern Water, to the water supply but the Chairman suggested that he should take this up with the water company as this issue was outside the Tribunal's jurisdiction.
18. He believed that a reasonable rent would be £400.00 per month or £450.00 if an extractor fan was fitted in the kitchen but provided no evidence in support.

## The Law

### 19. S.14 of the Act: "Determination of Rent by First-tier Tribunal:

*(1) Where, under subsection (4) (a) of section 13 above, a tenant refers to a First-tier Tribunal a notice under subsection (2) of that section, the Tribunal shall determine the rent at which, subject to subsections (2) and (4) below, the Tribunal consider that the dwelling-house concerned might reasonably be expected to be let in the open market by a willing landlord under an assured tenancy -*

- (a) which is a periodic tenancy having the same periods as those of the tenancy to which the notice relates;*
- (b) which begins at the beginning of the new period specified in the notice;*
- (c) the terms of which (other than relating to the amount of the rent) are the same as those of the tenancy to which the notice relates; and*
- (d) in respect of which the same notices, if any, have been given under any of Grounds 1 to 5 of Schedule 2 to this Act, as have been given (or have effect as if given) in relation to the tenancy to which the notice relates.*

*(2) In making a determination under this section, there shall be disregarded -*

- (a) any effect on the rent attributable to the granting of a tenancy to a sitting tenant;*
- (b) any increase in the value of the dwelling-house attributable to a relevant improvement carried out by a person who at the time it was carried out was the tenant, if the improvement -*
  - (i) was carried out otherwise than in pursuance of an obligation to his immediate landlord, or*
  - (ii) was carried out pursuant to an obligation to his immediate landlord being an obligation which did not relate to the specific improvement concerned but arose by reference to consent given to the carrying out of that improvement; and*
- (c) any reduction in the value of the dwelling-house attributable to a failure by the tenant to comply with any terms of the tenancy.*

*(3) For the purposes of subsection (2)(b) above, in relation to a notice which is referred by a tenant as mentioned in subsection (1) above, an improvement is a relevant improvement if either it was carried out during the tenancy to which the notice relates or the following conditions are satisfied, namely -*

- (a) that it was carried out not more than twenty-one years before the date of service of the notice; and*
- (b) that, at all times during the period beginning when the improvement was carried out and ending on the date of service of the notice, the dwelling-house has been let under an assured tenancy; and*
- (c) that, on the coming to an end of an assured tenancy at any time during that period, the tenant (or, in the case of joint tenants, at least one of them) did not quit.*

*(4) In this section "rent" does not include any service charge, within the meaning of section 18 [see para 17 below] of the Landlord and Tenant Act 1985, but, subject to that, includes any sums payable by the tenant to the landlord on account of the use of furniture, in respect of council tax or for any of the matters referred to in subsection (1) (a) of that section, whether or not those sums are separate from the sums payable for the occupation.*

...

*(7) ... the rent determined ... shall be the rent under the tenancy with effect from the beginning of the new period specified in the notice or, if it appears to the appropriate tribunal that that would cause undue hardship to the tenant, with effect from such later date ... [that the Tribunal determines] not later than the date of the determination.*

... “

20. S.18 of the Landlord and Tenant Act 1985 (“the 1985 Act”): “Meaning of “service charge” and “relevant costs”:

*(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*

*(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and*

*(b) the whole or part of which varies or may vary according to the relevant costs.*

*(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

*(3) ... “*

21. Hence, the Tribunal has no jurisdiction to deal with fixed service charges<sup>1</sup>.

### **Consideration and Valuation**

22. The Tribunal is required to determine the rent at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under an assured tenancy. The personal circumstances of either party are not relevant to this issue.

23. There has been reference throughout this case to the increase in service charge costs and Mr Wright made extensive representations on the point. The Tribunal noted that the charge for services had increased over the years.

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<sup>1</sup> See Home Group Ltd v Lewis LRX/176/2006; Morshead Mansions Ltd v Leon di Marco [2008] EWCA Civ 1371; & Arjun Chand v Calmore Area Housing Association Limited LRX/170/2007.

24. The Tribunal has jurisdiction to determine a rent in the market. As mentioned in “The Law” above, although the total charge made to the Tenant includes a services element the Tribunal does not have jurisdiction to interfere expressly with this element of the total rent. Whatever the charge made for services, (whether higher, lower or the same), the total rent determined by the Tribunal in this decision would be the same.
25. The Tribunal was not assisted by the Landlord which failed to follow Directions and did not take the opportunity to participate in proceedings. The Tribunal is forced to rely on the Tenant’s representations and its own knowledge and experience.
26. Thus in the first instance the Tribunal determined what rent the Landlord could reasonably be expected to obtain for the property in the open market if it were let today on the terms and in the condition that is considered usual for such an open market letting. Neither party provided details of other lettings on which a market rent assessment could be based although the Tenant did suggest rental levels that he thought appropriate. In the absence of any evidence we relied on our own knowledge of general rent levels for this type of property in the area.
27. The rentals for other assured tenancies would also include the benefit of the services included with the subject property and these will be greater in sheltered accommodation so no further adjustment is required for this. Having regard to this we determined that the starting point for a small purpose built flat in this locality, having regard to the shortcomings of location, should be £625.00 per calendar month.
28. However, the rent referred to in the above paragraph is on the basis of a modern open market letting where the tenant has no liability to carry out internal decorations, and the landlord supplies white goods, carpets and curtains and other usual fittings.
29. In this case the Tenant supplies his own white goods floor coverings and curtains.
30. The Tribunal has therefore made the following deductions of £90.00 from the starting point of £625.00 per calendar month. As the parties did not supply any evidence of allowances that they might make these are based on our estimate of the lower rental bid that might be made by a hypothetical tenant to allow for the differences when compared to a modern market letting.
 

a) Lack of floor coverings and curtains provided by the Landlord	£30.00
b) Lack of white goods provided by the Landlord	£30.00
c) Electric heating and hot water only	£10.00
d) Poor telephone reception and no internet	£5.00
e) Increased tenant’s decorating liability	£15.00
Adjusted rent	£535.00 per calendar month

## **Determination**

31. The Tribunal therefore decided that a rent of £535.00 per calendar month is the figure at which the subject property might reasonably be expected to be let in the open market by a willing Landlord under the terms of this assured tenancy.
32. The Tribunal then considered the starting date for the new rent and as the Tribunal is unable to make any finding of hardship it is confirmed that the new rent of **£535.00 per calendar month** is to take effect on 01 April 2019 the date specified in the Landlord's notice.

**Chairman: B H R Simms FRICS**

**Date: 25 June 2019**

## **PERMISSION TO APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) on a point of law must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.